

McNamara Declaration

Exhibit 136

From: Chris Freeland
Sent: Thursday, February 28, 2019 12:33 PM EST
To: Blake, Tom
Subject: Re: FW: Open Library and Boston Public Library

The university presses were NOT amused by the SoA's "purple prose" (their words). It's like working with someone writing the comments section on Fox News.

On 2/28/19 11:30 AM, Blake, Tom wrote:

> I found this particularly offensive:
> "Physical books deteriorate over time and have a limited lifespan"
> Really? When are all the books going to die?!
>
> Tom Blake
> Content Discovery Manager
> Boston Public Library
> 700 Boylston St.
> Boston, MA 02116
> [REDACTED]
> Free To All
>
> From: Chris Freeland [mailto:c.freeland@archive.org]
> Sent: Thursday, February 28, 2019 12:26 PM
> To: Blake, Tom
> Subject: Re: FW: Open Library and Boston Public Library
>
> Nice that they included their real interest: "negotiate and purchase lending licences from the copyright owners"
> On 2/28/19 11:14 AM, Blake, Tom wrote:
> FYI...
>
> Tom Blake
> Content Discovery Manager
> Boston Public Library
> 700 Boylston St.
> Boston, MA 02116
> [REDACTED]
> Free To All
>
> From: Nicola Solomon [mailto:nicola.solomon@societyofauthors.org]
> Sent: Thursday, February 28, 2019 12:00 PM
> To: Blake, Tom
> Cc: Bryony Hall; Tim Gallagher; 'John Degen'; 'Rasenberger, Mary'; [REDACTED]
> Subject: RE: Open Library and Boston Public Library
>
> Dear Tom Blake,
> I find this reply astonishing and disingenuous. You and the Open Library have absolutely no legal right to digitise an author's books nor to implicitly authorise another to do so by donating them to the Internet Archive. By doing so, far from conferring a benefit on an author you prevent her making a living by licensing the content of her work.
> If the Open Library believes that is valuable to society to lend ebooks and undertake research on usage then it should negotiate and purchase lending licences from the copyright owners as is done by public libraries and other users both here and in the US. It certainly has the funds to do so . Your offer to share a file you do not own or have any rights to and for the author to make use of research derived from the unauthorised usage of the books is equivalent to you forcibly evicting me from my house and then inviting me in to have a cup of coffee and admire the beautiful new kitchen you have installed.

> Copyright is there to strike a fair balance between the rights of authors to make a living from their work and the public good in having access to that material. Its rules have been made through legislation and debate over many years. It is not for you to unilaterally overrule them to the detriment of authors. If authors can no longer make a living they will have to stop writing. Evidence from the UK as well as from the US and other countries shows that the number of full time authors is decreasingly alarmingly, precisely for that reason. We are huge supporters of authorised library lending, which strikes a fair balance between the needs of authors and users but unlawful lending such as that practised by the Open Library is piracy and ultimately leads to a decline in the breadth and quality of books available to everybody. I would urge you to reconsider your position and to stop your involvement in copyright theft.

>

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>

> Nicola Solomon

> Chief Executive

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> t: [REDACTED]

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> e: [REDACTED]@societyofauthors.org

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> w: www.societyofauthors.org

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> a:

> 84 Drayton Gardens

>,

> London SW10 9SB

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> Sign our open letter. Help us #EndEbookPiracy

>

> We're calling for the Internet Archive's Open Library to stop

> unlawfully scanning physical books and loaning them as ebooks.

> Find out more and sign our open letter here.

>

> The information in this message is confidential and may be privileged.

> It is intended solely for the addressee.

>

>

> -----Original Message-----

> From: Blake, Tom [REDACTED]@bpl.org>

> Sent: 28 February 2019 16:38

> To: Nicola Solomon <[REDACTED]@societyofauthors.org>

> Cc: Bryony Hall [REDACTED]@societyofauthors.org>; Tim Gallagher <[REDACTED]@societyofauthors.org>; 'John Degen' [REDACTED]@writersunion.ca>; 'Rasenberger, Mary' [REDACTED]@authorsguild.org>; [REDACTED]

> Subject: RE: Open Library and Boston Public Library
>
> Dear Nicola Solomon,
>
> As a point of clarification, The Boston Public Library no longer owns the copies of the books authored by Ms. Finlay that were digitized by the Internet Archive. Further, the Boston Public Library did not own these books when they were digitized by the Internet Archive. These titles were removed from our collection as a standard library weeding procedure based on circulation data and curatorial judgement. Rather than simply dispose of our weeded titles, we offer to donate them to the Internet Archive, a mission driven non-profit library dedicated to the long-term preservation and access to the world's knowledge and cultural heritage collections.
>
> For now, I believe it would be productive to focus on the benefits of Controlled Digital Lending for all parties involved. As I mentioned in my note to Ms. Finlay, as a result of this process and our partnership, we can now provide her with the digital files of her books that she would be free to use, resell, or republish as she and/or her publisher see fit. Lending libraries have irrefutably been an area where commercial interest for books is cultivated and supported – not replaced or dismantled. Lending an author's work helps to create and sustain a market for it – not the opposite. Usage statistics from the Open Library site can be used to help authors and publishers determine if a backlist or out-of-print title is worth reinvesting in as a reprint or a fully functional ebook. The machine readable text that is being generated from the digitization process can be used in text mining and natural language processing analytics, helping publishers and scholars detect linguistic trends over time. These trends can be used for market analysis and academic research. In short, our hope is that Ms. Finlay and other authors and publishers recognize the deep value of this initiative as it pertains to both the market and our cultural heritage as a literate and learned society.
>
> Sincerely,
> Tom Blake
> Content Discovery Manager
> Boston Public Library
> 700 Boylston St.
> Boston, MA 02116
> [REDACTED]
> Free To All
>
> From: Nicola Solomon [mailto:[REDACTED]@societyofauthors.org]
> Sent: Tuesday, February 26, 2019 11:49 AM
> To: Blake, Tom
> Cc: Bryony Hall; Tim Gallagher; 'John Degen'; 'Rasenberger, Mary'; [REDACTED]
> Subject: RE: Open Library and Boston Public Library
>
> Dear Tom Blake
> I am Chief Executive of the Society of Authors, the UK trade union for more than 10,500 writers. One of our members, Victoria Finlay, forwarded the correspondence below.
> I note your position- but it is incorrect in law and a flagrant breach of our member's rights.
> Open Library is infringing authors' copyright and the process you describe is unlawful under both US and UK law. Making a digital file of a physical book is a copyright act which requires permission. Neither the publisher nor our member has given permission for such use.
> We understand that Open Library justifies the copying and distribution of these books in the USA on the basis of a Position Statement on Controlled Digital Lending, authored by a number of US legal scholars, which argues that Controlled Digital Lending is legal under the US doctrine of fair use. This opinion cannot be sustained following the recent decision in the ReDigi case, which ruled that the resale of digital files is unlawful.
> Furthermore, US fair use doctrine does not apply in the UK where all scanning and lending must be authorised by the copyright owner. There is therefore no legal basis for the practice of scanning books without permission or lending them in the UK. Despite this, users in the UK are currently able to borrow scanned copies of physical books from Open Library. That is a direct and actionable infringement of copyright.
> In your email to Victoria Finlay you claim that CDL makes books 'available on the internet the same way a

physical copy would be lent in a physical library'. This is highly misleading. Owning a physical book does not give you the right to copy it and this is entirely different from library lending for a number of reasons • Physical libraries lend books to library members within a limited territorial range – no such limitation exists on Open Library, which offers books to people from all over the world. • Physical books deteriorate over time and have a limited lifespan, a principle which has been written into the fees charged for legitimate e-lending by libraries. There is no suggestion that books on Open Library will ever be 'retired' in this way.

> • You state that 'there is no financial profit to be gained from this process'. However the process will result in a financial loss for authors, who do not receive any royalties from these loans which undoubtedly compete with legitimate sales and loans. Authors' earnings are in decline and many are struggling financially. A survey carried out by the Authors' Licensing and Collecting Society (ALCS) in 2018 found that an author in the UK earned an average of just £10,500 from their writing per annum. The form of lending that takes place on Open Library has the potential to destroy the e-book market and make it even harder for authors to make a living from their work.

> • It also competes with borrowings from bona fide UK libraries. In the UK, libraries buy licences for the e-books they offer and authors are also compensated by Public Lending Right which affords them a small payment (around 8.5 pence) every time a book is loaned from a library. These payments are of significant value to authors. The Open Library pays nothing at all to the creator.

> We wrote to Internet Archive in January demanding that it ceases this practice which infringes the copyright of writers and is unquestionably unlawful in the UK. We have received no substantive response.

> Authors who do contact Open Library directly have not been answered or have been told that their works will be taken down "as a courtesy". They have not been offered compensation, nor indeed an explanation for the blatant infringement of their rights for which there is no legal defence.

> As a supporter of Internet Archive, we hope that you will inform them that they must take down the Open Library site in the UK and must stop infringing authors' copyrights and damaging their incomes worldwide. If you love books and wish to share them then you must ensure that their creators can receive a fair reward for their work.

> I look forward to hearing from you.

> Yours sincerely,

> Nicola Solomon.

>

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> Nicola Solomon

> Chief Executive

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> t: [REDACTED]

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> e: [REDACTED]@societyofauthors.org

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w: <https://emea01.safelinks.protection.outlook.com/?url=https://www.societyofauthors.org&data=02%7C01%7Cnolomon%40societyofauthors.org%7C365f09bbe3834039280308d69d9b22bf%7C847a6df2d2124118908182322693b1c5%7C1%7C1%7C636869686963348534&sdata=SfIAJ9ZqHXcrOb4H%2FYDcgw%2FLY1QXdZ2%2B5E2XVi7Q7bE%3D&reserved=0>

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> 84 Drayton Gardens

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> London SW10 9SB

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> Sign our open letter. Help us #EndEbookPiracy
>
> We're calling for the Internet Archive's Open Library to stop
> unlawfully scanning physical books and loaning them as ebooks.
> Find out more and sign our open letter here.
>
> The information in this message is confidential and may be privileged.
> It is intended solely for the addressee.
>
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>
> From: V Finlay <[REDACTED]>
> Sent: 20 February 2019 18:27
> To: The Society of Authors <info@societyofauthors.org>
> Subject: Fwd: QUERY INTL 02.20.19 Open Library Copyright issue BPL donated book ejc
>
> Dear Society of Authors
>
> I'm a member and recently I was galvanised by your campaign to let my US agent (Sterling Lord) know that two
of my books are available on Open Library. I borrowed one and was horrified to find that I could just download it.
Like I'd bought it.
>
> They say you can't copy or print, but obviously you can screenshot and read.
>
> I wrote to Boston Library whose scheme it is, and this is the answer I received. Slightly horrified that Tom Blake,
Content Discovery Manager, is describing the process as "weeding".
>
> I send it to you in case you think it might be useful to contact Boston Library and explain that they are violating
UK copyright law.
>
> Best wishes
>
> Victoria
>
> Begin forwarded message:
>
> From: "Blake, Tom" <[REDACTED]@bpl.org>
> Subject: RE: QUERY INTL 02.20.19 Open Library Copyright issue BPL donated book ejc
> Date: 20 February 2019 at 16:24:40 GMT
> To: Ask The Boston Public Library <ask@bpl.org>, Victoria Finlay <[REDACTED]@arcworld.org>
> Cc: Digital <Digital@bpl.org>, "[REDACTED]@archive.org" <[REDACTED]@archive.org>
>
> Hi Victoria,
>
> Open Library is a project of the Internet Archive, a non-profit digital library based out of San Francisco, CA.
>
https://emea01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fen.wikipedia.org%2Fwiki%2FInternet_Archive&data=02%7C01%7Cnsolomon%40societyofauthors.org%7C365f09bbe3834039280308d69d9b22bf%7C847a6df2d2124118908182322693b1c5%7C1%7C1%7C636869686963348534&sdata=WKAzPUnf0JVt4%2F

Kw1P5qbhH1kO40mc5y3V7OYS0E4i8%3D&reserved=0

> The copy of your book that you cite below got to them because of our deaccessioning and digitization partnership we have with them. Essentially, we weeded the book from our collection and gave it to them for permanent preservation storage and digitization. The digitized copy that has been made available through Open Library is only viewable by one person at a time at any given time (for a period of two weeks) and the physical book does not circulate. Copy and print features have been disabled. This is referred to as Controlled Digital Lending. Several libraries and publishers here in the US have started using this method as a way of making books that have no digital form available on the internet the same way a physical copy would be lent in a physical library.

>

<https://emea01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fcontrolleddigitallending.org%2F&data=02%7C01%7Cnsolomon%40societyofauthors.org%7C365f09bbe3834039280308d69d9b22bf%7C847a6df2d2124118908182322693b1c5%7C1%7C1%7C636869686963348534&sdata=DvRAKmGDKViGM2XEplbSyTtWm6p7sHeu18FODduonmI%3D&reserved=0>

> There is no financial profit to be gained from this process and there only will ever be one version of the purchased book made available. We believe that this is good balance between respecting the copyright of the author/publisher while still fulfilling our mission as a lending library. Further, digitization of these titles makes them accessible to print-disabled readers. The page images are scanned and then run through special software that converts the text images into machine readable characters that can be rendered as an audio file. Blind readers can now hear your book! We hope you agree that this is a worthy process. We can supply you with the digital version of your book at anytime. You would, of course, be free to use it however you see fit. We hope that, among other things, lending your book online in the manner Open Library has will open up new audiences and potential markets for your work.

Please let us know if you have any further questions or concerns.

>

> All the best,

> Tom

>

> Tom Blake

> Content Discovery Manager

> Boston Public Library

> 700 Boylston St.

> Boston, MA 02116

> [REDACTED]

>

> From: Ask The Boston Public Library

> Sent: Wednesday, February 20, 2019 10:39 AM

> To: Victoria Finlay

> Cc: Digital

> Subject: QUERY INTL 02.20.19 Open Library Copyright issue BPL donated book ejc

>

> Hi Victoria,

>

>

> Your question has been forwarded to the appropriate staff or department; these are noted in the "cc" for this response. You will receive an answer from that department. If you need to follow up on the question, please contact that department directly.

>

>

>

> Thank you for using the Boston Public Library's e-reference service.

>

>

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> Reference and Information Services

> Boston Public Library

> 700 Boylston St.

> Boston, MA 02116

> ask@bpl.org
> [REDACTED] option 3
>
>
> From: Victoria Finlay <[REDACTED]@arcworld.org>
> Sent: Wednesday, February 20, 2019 7:02 AM
> To: Ask The Boston Public Library
> Subject: Open Library - question about you giving away my book to be scanned.
>
> Dear Boston Public Library
>
> I'm an author based in the UK. A strange thing has happened. A US based company called Open Library has put two of my books (Color, A Natural History of the Palette and Jewels: a secret history) up onto its website, has scanned it fully and is lending it out free of charge. As you can imagine I'm rather surprised and shocked. In the UK this is against all of our copyright laws. My agent, Sterling Lord, is contacting Random House/Ballantine, which is the US copyright holder, to see whether they can ask for it to be taken down.
>
> As you can imagine, writing books takes ages and is expensive, so as an author you need at least some people to buy them. I'm sure that the publishers feel the same.
>
> You might be wondering why I'm contacting you. And it's because you are recorded as the "donor" of the book - you can see it on the attached screenshot. I don't know what this means, and perhaps you don't either, but I wondered whether you are loaning your books out in order to be scanned like this.
>
> I'd love to know whether other people have contacted you as well.
>
> Best wishes,
>
> Victoria Finlay
>
>
> [cid:A61CFFCD-3959-44EE-B6C2-56E77D1248A4@home]
> <image001.png>
>
>
>

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Chris Freeland
Director of Open Libraries
Internet Archive
[REDACTED]@archive.org
@chrisfreeland
[REDACTED]